IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5947 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAHENDRAKUMAR R CHUDASMA - Petitioner
Versus
STATE OF GUJARAT - Respondent

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Appearance :
MR HM JADEJA for Petitioner(s) : 1,
MR LR PUJARI AGP for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 28/03/2007

ORAL JUDGMENT

1. Mr.Jadeja, learned counsel for the petitioner and Mr.L.R. Pujari, learned counsel for the respondent – State.

2. By the present writ application, the petitioner, being aggrieved by the order dtd.22/1/1992 passed in Review

Application No.TEN/BA/95/87, confirming order dtd.25/11/1986 passed in Ceiling Revision Case No.36 of 1986, where-under, learned Dy.Collector set aside the order dtd.14/2/19865 passed by the Mamlatdar-cum-ALT, Dhandhuka in Ceiling Case No.120/Bavaliyari/76, has filed the present writ application challenging correctness, validity and propriety of the above referred two orders.

3. The case of the petitioner is that though 60 Acres and 7 Gunthas of land was recorded in his name, but, in fact, the land was ancestral land and his younger brother and mother had rights in the property and as each of them being members of the joint family, are entitled to one share, no excess land was left.

4. Learned Mamlatdar-cum-ALT held that the land was ancestral land and there was no surplus, however, the Dy.Collector in the revision application held that the land was in the name of the petitioner and as none else had any right in the property and as there was Mutation Entry No.99 in the revenue records showing that partition was effected on 26/5/1956, the said entry having attained finality, would lead to only one conclusion that the partition was effected in the year 1956 and there was no joint family. The Gujarat Revenue Tribunal confirmed the

said order, therefore, the petitioner is before this Court.

5. Mr.Jadeja, learned counsel for the petitioner submits that the mother and brother of the petitioner were entitled to a notice under sec.20 of the Tenancy Act and for that purpose, he places his reliance upon a Division Bench Judgment of this Court in the matter of Kashiben Vs. State, reported in 1971 G.L.R. 540. His submission is that if no notice is issued to the brother and the mother of the petitioner, the proceedings would be illegal. The submission of Mr.Jadeja further is that in the year 1956, the petitioner was a minor and the said partition effected by the father, would not bind him.

6. Mr.Pujari, learned Assistant Government Pleader for the State has opposed this writ application.

7. Undisputedly, Mutation Entry No.99 was made on 26/5/1956 in the revenue records. The petitioner, who was a minor in the year 1956 even after a lapse of 20 years i.e. in the year 1976 did not choose to challenge the said entry. The law of limitation provides that if at the time of accrual of the cause of action, a particular person is under a disability or legal disability or a minor, then limitation would start running after removal of the disability. In case of a minor, law provides that a suit for

declaration etc. or for any other relief, is to be filed within a period of three years from the date of removal of the disability.

8. The submission of the petitioner that he could not challenge the alleged partition during the life time of his father as he was residing with his father, cannot provide any solace in favour of the petitioner, specially when the petitioner got 60 Acres of land while others received much less. In fact, the cause of action was in favour of brother and the mother, who had received less share.

9. The petitioner not having challenged Mutation Entry dtd.26/5/1956, now cannot be allowed to raise the question that the entry was bad, illegal or contrary to the interest of the petitioner or another members of the family.

10. So far as notice under Sec.20 and judgment in the matter of Kashiben (supra) is concerned, that was the case where the property standing in the name of individual members of the family, were sought to be clubbed and the whole thing was to be taken as one unit, the Division Bench of this Court observed that notice to each person would be necessary. In the present case, the properties are not clubbed together. The land stands in

the name of the petitioner. Once it is held that the petitioner is the recorded owner since 1956 and did not challenge the said partition and entry and the entry continues then such entry has to be accepted as correct, then there is no reason to hold that the land standing in the name of the petitioner even after partition continue to be family property.

11. The Collector and the Gujarat Revenue Tribunal were absolutely justified in holding that the land was not joint family land and others had no right.

12. I find no reason to interfere, the petition deserves to and is accordingly dismissed. Rule is discharged. No costs.

(R.S. GARG, J.)

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